

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATIONAL CITY BANK, N.A. and THE)
PNC FINANCIAL SERVICES GROUP,)
INC.,) CV-10-034-EFS
Plaintiffs,)
vs.)
PRIME LENDING, INC.; RONALD D.)
THOMAS and JOHN DOES 1-20,)
Defendants.)

PROTECTIVE ORDER

On April 16, 2010, the parties filed a Stipulation and [Proposed] Protective Order (Ct. Rec. [101](#)). Based on the parties stipulation, the following Protected Order is **HEREBY ENTERED**:

1. Any material exchanged or obtained in discovery shall be used by the receiving party solely for the prosecution and/or defense of the lawsuit and for purposes of evaluation of settlement and for settlement negotiations, and not for any other purpose, including without limitation, any competitive or business purpose. Nothing contained herein shall restrict or prevent any party from disclosing or otherwise using any information or documents not obtained under this Order.

2. Any party may designate the information it produces as "CONFIDENTIAL" if it believes, in its good faith judgment, that the

1 material contains confidential, sensitive or proprietary
2 information that falls within the foregoing description of
3 CONFIDENTIAL MATERIALS. The party shall make this designation by
4 placing on every document or other material containing such
5 information the legend "CONFIDENTIAL" prior to providing such
6 document or other material or, if such method of designation is not
7 feasible by providing other written notice of such designation.

8 3. In the case of depositions, designation of the portion of
9 the transcript, including exhibits, which contains "Confidential"
10 information shall be made by a statement to such effect on the
11 record in the course of the deposition. All copies of deposition
12 transcripts that contain material designated as "CONFIDENTIAL"
13 shall be prominently marked "CONFIDENTIAL" on the cover thereof
14 and, if and when filed with the Clerk, the portions of such
15 transcript designated "CONFIDENTIAL" shall be filed under seal.

16 4. If, at any time, a party disagrees with the designation
17 of a document or other information as "Confidential" and protected
18 by this Order, the parties must first attempt to resolve the
19 dispute by conferring pursuant to Rule 26. Failure to challenge a
20 "Confidential" designation shall not constitute an admission that
21 such designation is appropriate. If the dispute is not resolved
22 through the conference process , then the designator will have
23 fourteen (14) days to move the Court for protection . As provided
24 in Rule 26(c), the burden of establishing that any information or
25 material should be designated and treated as "Confidential" shall
26 be on the party seeking to uphold the designation. Any disputed
27 document or information will be treated as protected under this
28

1 Order unless and until the Court enters an order otherwise, or
2 until the time period for seeking such a ruling expires.

3 5. Under no circumstances, other than those specifically
4 provided for in this AGREEMENT or subsequent agreement or a court
5 order or with the explicit consent in writing of the producing
6 party with respect to specifically identified CONFIDENTIAL
7 MATERIALS, shall CONFIDENTIAL MATERIALS or their contents in any
8 way whatsoever be revealed, published, disclosed or otherwise made
9 known to persons other than the following:

- 10 a. the parties to this action;
- 11 b. inside and outside counsel for the parties, as well
12 as their employees assisting with this action;
- 13 c. Outside photocopying, data processing, graphic
14 production services or other vendors retained by counsel
15 for a Party to assist in this litigation;
- 16 d. experts or consultants retained in good faith to
17 assist counsel in this litigation, but only upon the prior
18 execution of an agreement to be bound by this AGREEMENT in
19 the form attached hereto as Appendix A;
- 20 e. court reporters who record testimony taken in the
21 course of this litigation,
- 22 f. the Court, pursuant to paragraph 9 of this
23 AGREEMENT;
- 24 g. any deponent or witness to whom counsel for a Party
25 determines in the exercise of judgment reasonably exercised
26 disclosure is necessary for the prosecution or defense of
27 this litigation, including preparation for deposition or
28 other testimony, provided that prior to disclosure such

1 deponent agrees, in writing to be bound by the terms of
2 this Order.

3 6. Any deposition or portion thereof during which
4 Information designated as "Confidential" is being disclosed by any
5 party shall be taken as if in camera without any persons in
6 attendance other than the deposition witness, and those identified
7 in paragraph 4 (for "Confidential" Information). The court
8 reporter shall be provided with a copy of this Stipulated
9 Confidentiality Agreement and Protective Order.

10 7. Each person given access to the CONFIDENTIAL MATERIALS
11 pursuant to paragraph 4 of this AGREEMENT shall be advised by
12 counsel for the party giving access that the material or
13 information is subject to the terms of this AGREEMENT and may not
14 be disclosed other than pursuant to the terms thereof.

15 8. Prior to disclosure of the CONFIDENTIAL MATERIALS to the
16 parties in this action, counsel for the party seeking to make such
17 disclosure shall provide to its client(s) a copy of this AGREEMENT
18 and explain the terms and conditions thereof.

19 9. Prior to disclosure of CONFIDENTIAL MATERIALS to any of
20 the persons described in paragraph 4.c, d, and g. of this
21 AGREEMENT, such persons shall first:

22 a. read this AGREEMENT; and

23 b. sign a copy of the Confidentiality Agreement
24 attached hereto as Appendix A and thereby become subject to
25 this AGREEMENT. Copies of the signed Confidentiality
26 Agreement are to be retained by counsel for the party
27 making the disclosure.

1 In addition, upon request, but no later than thirty (30) days
2 following a final resolution of this action, persons described in
3 paragraph 4.c, d and g. of this AGREEMENT must promptly return all
4 CONFIDENTIAL MATERIALS to the producing party.

5 10. In the event that counsel for any party files with this
6 Court any CONFIDENTIAL MATERIALS or any papers containing or making
7 reference to such material or information, such documents, or the
8 portions of them that contain CONFIDENTIAL MATERIALS, shall be
9 filed in a sealed envelope on which substantially the following
10 statement shall be endorsed:

11

12 **FILED UNDER SEAL**
CONFIDENTIAL

13

14 **This envelope contains documents that are
subject to a Stipulated Agreement Governing
Confidential Material entered in this action.**

15

16 11. All such material so filed shall be maintained by the
17 Clerk of the Court separate from the public records in this action
18 and shall be released only upon Order of the Court.

19 12. Entering into, agreeing to and/or producing or receiving
20 materials or otherwise complying with the terms of this AGREEMENT
21 shall not:

22 a. prejudice in any way the rights of a party to object
23 to the future production of documents it considers not
24 subject to discovery;

25 b. prejudice in any way the rights of a party to
26 attempt to introduce into evidence the CONFIDENTIAL
27 MATERIALS, subject to any and all objections made thereto;

28 c. prejudice in any way the rights of a party to apply

1 to the Court for a protective order or an in camera
2 inspection relating to any CONFIDENTIAL MATERIALS or other
3 discovery materials; or

4 d. prejudice in any way the rights of a party to apply
5 to the Court at any time for an order removing a party's
6 confidential designation.

7 13. This AGREEMENT has no effect upon, and its scope shall
8 not extend to, a party's use of its own CONFIDENTIAL MATERIALS.

9 14. Counsel for the parties will maintain, for in camera
10 inspection by the Court, copies of all Confidentiality Agreements
11 signed pursuant to the provisions of this AGREEMENT.

12 15. The inadvertent production of CONFIDENTIAL MATERIALS
13 subject to the attorney-client, work-product or other privilege or
14 doctrine shall not waive any such privilege or doctrine. In
15 addition, the fact that privileged CONFIDENTIAL MATERIALS were
16 inadvertently produced shall not be used in any manner to support
17 a claim of waiver. Upon receiving notice from a party that
18 privileged or otherwise protected CONFIDENTIAL MATERIALS have been
19 inadvertently produced, any person or entity receiving such
20 CONFIDENTIAL MATERIALS shall return them and all copies, and all
21 documents or other material containing all or any portion of
22 information contained in or derived from such CONFIDENTIAL
23 MATERIALS shall be destroyed, within seven (7) business days to the
24 producing party, unless the receiving party intends to challenge
25 the producing party's claim(s) of attorney-client, work-product or
26 other privilege or doctrine. If the receiving party intends to
27 challenge the producing party's claim(s) the receiving party
28 nevertheless shall treat the CONFIDENTIAL MATERIALS as

1 confidential, subject to this Order, and may not use the
2 CONFIDENTIAL MATERIALS for any purpose other than making a motion
3 to the Court that challenges the producing party's claim(s) of
4 attorney-client, work-product or other privilege or doctrine.

5 16. The inadvertent failure by a Party to designate
6 CONFIDENTIAL MATERIALS as CONFIDENTIAL shall not be a waiver of
7 such designation provided that the party who fails to make such
8 designation informs the receiving party within seven (7) business
9 days from when the failure to designate first became known to the
10 producing party. The party receiving CONFIDENTIAL MATERIALS that
11 the producing party inadvertently failed to designate as
12 CONFIDENTIAL shall not be in breach of this Order for any use made
13 of such information before the receiving party is informed of the
14 inadvertent failure to designate pursuant to this Paragraph. Upon
15 receipt of such notice, the receiving party shall immediately take
16 reasonable steps to ensure that any CONFIDENTIAL MATERIALS
17 disclosed to persons or entities not authorized to receive it
18 pursuant to this Order, and all copies thereof, are retrieved and
19 secured as required by this Order, and that the unauthorized
20 persons or entities provided with such CONFIDENTIAL MATERIALS
21 agree, in writing, to be bound by the provisions of this Order.

22 17. In the event additional parties to this litigation desire
23 to have access to the CONFIDENTIAL MATERIALS, neither such parties
24 or their counsel or their experts or consultants retained to assist
25 said counsel shall have access to the CONFIDENTIAL MATERIALS until
26 said party or their counsel has executed and filed with the Court
27 a copy of this AGREEMENT, and has served a copy of same on all
28 counsel of record.

1 18. After the termination of this proceeding, this AGREEMENT
2 shall continue to be binding upon the parties hereto and their
3 successors and assigns, and upon all persons to whom the
4 CONFIDENTIAL MATERIALS has been disclosed or communicated and the
5 parties hereto agree that the Court shall retain jurisdiction over
6 the parties for enforcement of its provisions.

7 19. Upon conclusion of this litigation, all the CONFIDENTIAL
8 MATERIALS and all copies thereof (including copies provided to
9 testifying or consulting experts) shall either be destroyed or
10 returned to the producing party along with an affidavit of counsel
11 indicating that counsel has made a good faith effort to destroy or
12 return all such CONFIDENTIAL MATERIALS, and believes in good faith
13 that all such copies have been destroyed or returned.

14 20. If any party (or their counsel) to this action receives
15 a subpoena or other compulsory process demanding information,
16 documents or materials considered "CONFIDENTIAL" pursuant to this
17 AGREEMENT, the party or counsel receiving the subpoena or other
18 compulsory process shall give written notice of the subpoena or
19 other compulsory process to counsel for the producing party at
20 least 14 days prior to the return date, or, if the subpoena or
21 other compulsory process has a return date of less than 14 days,
22 notice shall be given to the designating person by facsimile as
23 soon as possible but in no event later than 72 hours prior to the
24 return date.

25 21. Absent notification in writing that the producing party
26 has taken (or intends to take) action to protect the
27 confidentiality of the requested information, document or material,
28 the party or counsel subject to the subpoena or other compulsory

process may produce the requested information, document or material on the return date provided it makes clear that such information, documents and material were provided with the understanding that they would be maintained confidentially pursuant to this AGREEMENT.

22. The failure of either party to enforce any provision or provisions of this AGREEMENT shall not be in any way construed as a waiver of any such provision or provisions, nor prevent that party from thereafter enforcing each and every other provision of this AGREEMENT.

23. The parties' Joint Motion for Protective Order (Ct. Rec. 101) is GRANTED.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and distribute copies to counsel.

ORDERED this 20th day of April 2010.

s/Edward F. Shea
EDWARD F. SHEA
United States District Judge

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